IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.201 OF 1996

Smt. Shabana Mohammed Hanif Sorathia
Adult, Indian Inhabitant of Bombay
Residing at Mohammed Siddiqui Chawl,
Room No.4, Plot No.7, Gaondevi,
Poisur, Kandivali (East),
Bombay- 400 101. ..Applicant.

Vs.

Shri Siddhique Mohammed Khan
Respondent No.1 deleted
Since deceased through legal heirs
and representatives
1a. Babi w/o. Siddhique Mohd. Khan
aged about 65 years, Occ: Housewife,
1b. Pappu s/o. Siddhique Mohd. Khan
aged about 35 years, Occ: Business
Both residing at Siddhique Khan Chawl,
Gaondevi Road, Poisar, Kandivali (E)
Mumbai 400 101.
1c. Munni Abbas Ali Khan
(Married daughter), age 45 years
Occupation: Housewife, residing at
Siddhique Khan Chawl,
Gaondevi Road, Poisar, Kandivali (E),
Mumbai- 400 101.

2. Mohammed Hanif Sorathia
Adults, Indian Inhabitant of Bombay,
Residing at Room No.4, Siddique Khan Chawl,
Gaondevi Road, Poisur, Kandivali (E),
Bombay 400 101 (CRA dismissed against R.No.2
vide Court's order dated
12/9/2006 passed in this CRA.)
..Respondents.

Mr.V.S.Kapse, adv. for the Applicant.

Mr.T.D.Deshmukh, adv. for the Respondent Nos.1A and 1B.

CORAM : J.H.BHATIA, J.
DATE : DECEMBER 18, 2007.

ORAL JUDGMENT:

1. The deceased respondent no.1 was the original applicant and was landlord of the suit premises. The present respondents are the legal representatives of the deceased respondent no.1. The respondent no.1 had filed case no.35 of 1991 before the Competent Authority (Rent Act) against the present respondent no.2 Mohammed Hanif is under Section 13A(2) of the Bombay Rents, Hotel and Lodging House Rates (Control) Act (Hereinafter referred to as 'Bombay Rent Act'). It was his contention that the respondent no.2 was inducted in the suit premises as licensee for the period beginning from 1-4-1990 and ending with 28-2-1991. He was to pay an amount of Rs.100/- as a compensation for occupation of the premises. Notice was issued to him on 23rd February, 1991 to vacate the premises on the end of license period. However, respondent no.2 sought some more time and time was extended till the end of April, 1991. However, he did not vacate the premises and, therefore, on the basis of written deed of licence, the landlord filed case for eviction. After service of summons, the respondent no.2 Mohammed Hanif appeared and filed written statement after obtaining leave to contest the application. However, thereafter he did not appear on number of dates and the matter

proceeded ex-parte against him. In view of the fact that there was agreement in writing about the leave and licence dated 1-4-1990 and the terms of the leave and licence were recorded in that agreement, the competent authority passed the order dated 19-10-1994 for eviction of the respondent no.2 under Section 13A(2) of the Bombay Rent Act. That order had become final because no appeal or revision was preferred against that order. Thereafter, the landlord filed Execution Application No.3 of 1994 for execution of that order and for getting the possession.

2. The present revision applicant, who is the wife of the respondent no.2, appeared and contended that infact, she herself was a tenant in the suit premises and she has documents like rent receipts in support of her claim. She also stated that she had filed Regular Civil Suit No.763 of 1991 in the Small Causes Court at Bandra for declaration that she was tenant in the suit premises. However, that suit was dismissed in default as her husband had not attended the suit on the dates of hearing of the matter. She claimed that she had come to know about this proceeding for eviction only when the notice of the execution application was served. She applied for being impleaded as the respondent no.2 in the execution proceeding. However,

her application for being impleaded came to be rejected by the order dated 22-12-1994 by the Competent Authority on the ground that she had no right in the suit property and she had no concern with the execution proceedings, which were between the landlord and her husband. Thereafter, during the execution proceeding, she raised objection to the execution proceeding and her statement was recorded. However, that objection application also came to be rejected on the ground that she had no right in the suit property nor she is concerned with the execution proceedings, which were between the landlord and her husband. That order dated 7-3-1996 is challenged in the present Revision Application.

3. By this Revision Application, the applicant not only challenges the order passed by the Competent Authority on 7-3-1996 rejecting her objection to the execution of the decree but she also challenges the decree, which was passed by the Competent Authority in favour of her husband in Case No.35 of 1991 on 19-10-1994. According to her, she being the tenant, the order for eviction could not have been passed against her husband and she should have been given an opportunity to prove that she is a tenant . According to her, she is having sufficient documents in her possession to prove that she is the tenant and the

application under Section 13A(2) of the Bombay Rent Act, which provides for summary proceeding for eviction in case of licence for residence only is not tenable. She also contended that the suit premises are declared to be slum area and, therefore, suit/application itself could not have been filed without obtaining necessary permission under Section 22 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (Hereinafter referred to as 'Slum Act'). Similarly, the decree also can not be executed for want of necessary permission under Section 22 of the Slum Act.

4. Heard the learned counsel for the Parties. Perused the copies of the record produced alongwith the revision application.

5. At the outset, it may be stated that it is clear from her own version in her application dated 22nd December, 1994 for impleading her as a party in the execution proceeding, she had filed Suit No.763 of 1991 before the Small Causes Court, Bombay at Bandra under The Presidency Small Cause Courts Act, 1882 for the declaration that she is tenant in the suit premises. That suit was admittedly dismissed in default as neither she herself nor her husband as her representative had appeared when the matter was called

for hearing. She had never taken any steps for setting aside the order of dismissal of her suit and for restoration of that suit and as such, the order of dismissal of the suit has become final. Section 43 of The Presidency Small Cause Courts Act, 1882 provides that in all suits, appeals and proceedings under Chapter 7 of the said Act, the Small Cause Court shall, as far as possible and except as therein otherwise provided, follow the procedure prescribed by the Code of Civil Procedure. In view of this provision, Order IX Rule 9 of the Civil Procedure Code will be applicable. Order 9 Rule 9 of the Civil Procedure Code clearly provides that where a suit is wholly or partly dismissed in default under Rule 8, the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action but he may apply for an order to set the dismissal aside, and if he satisfies the court that there was sufficient cause for his non-appearance when the suit was called for hearing, the Court shall make an order setting aside the dismissal upon such terms as to costs or otherwise as it thinks fit. As pointed out earlier, the present applicant had never applied for setting aside the dismissal of that suit. In view of this and in view of the provisions of Order 9 Rule 9, the present applicant is precluded from filing a fresh suit in respect of the same cause of action in the suit. In the suit she had

specifically claimed declaration that she is a tenant in the suit premises. That suit has been dismissed, therefore, she can not file a fresh suit again seeking declaration that she is tenant in the suit premises. If she is precluded from filing a suit for same reliefs on the same cause of action, she will also be precluded from taking that defence in the execution proceeding and she can not obstruct execution proceeding taken up against her husband contending that she is a tenant in the suit premises. In view of this, her application to implead her as a party in the execution proceeding and her objection in execution were rightly rejected.

6. It is contended on behalf of the applicant that the suit itself could not be filed for eviction without prior permission under Section 22 of the Slum Act and now the decree also can not be executed for want of necessary permission under the said provision. Infact, she being not a party to the eviction proceeding and to the execution proceeding , she can not take such an objection. Such an objection could have been taken by her husband alone. The learned counsel for the legal representatives of the respondent no.1, i.e., the original landlord, vehemently contended that the provisions of Slum Act will not be applicable where the special procedure laid down by the legislature is applicable for the purpose of eviction of licensee

under Section 13A(2). It may be noted that by way of amendment by the Maharashtra Act No.XXVIII of 1987, Section 13A(1) and Section 13A(2) were incorporated in the Bombay Rent Act. Under Section 13A(1), provision is made for recovery of possession of premises required for self occupation in respect of members of armed forces of the Union, Scientists or their successor-in-interest and Section 13A(2) provides for recovery of possession of premises given on licence for residence purpose only by the landlord. Part II-A comprising of Sections 31A to 31J was incorporated to provide for summary disposal of such applications under Sections 13A(1) and 13A(2). Under this chapter the tenant or licensee does not have legal right to contest the application for eviction but after appearance he can seek leave to contest. Under Section 31E(4) summary procedure for disposal of such application is provided so that the landlord, who has given the premises on leave and licence basis for residence purpose only, may be entitled to recover the possession without following the lengthy procedure as laid down in other parts of the Rent Act. Certain safeguards are, provided in the procedure itself. It is necessary that the leave and licence agreement should be in writing. Section 13A(2) provided that an agreement for license in writing shall be conclusive evidence of the facts stated therein. Section 31A reads as follows:

> 31A. Provisions of this Part to have overriding effect.
>
> The provisions of this Part or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained elsewhere in this Act or in any other law for the time being in force.

Language of the Section clearly shows that it is non obstante clause and the procedure laid down in Part II-A shall have effect notwithstanding anything inconsistent therewith contained elsewhere in the Bombay Rent Act or in any other law for the time being in force. Thus, this chapter has overriding effect over the other provisions in Bombay Rent Act as well as other laws, which may be relevant and which may be in force for the time being.

7. Section 22(1) of the Maharashtra Slum Act reads as follows:

> 22(1) Notwithstanding anything contained in any other law for the time being in force, no person shall except with the previous permission in writing of the Competent Authority,-
>
> (a) institute, after commencement of the Maharashtra Slum Areas (Improvement, Clearanace and Redevelopment) Act, 1971, any suit or proceeding for obtaining any decree or order for the eviction of an occupier from any building or land (in a slum area or for recovery of any arrears of rent or compensation from any such

> occupier, or for both; or]
>
> (b) when any decree or order is obtained in any suit or proceeding instituted before such commencement for the eviction of any occupier from any building or land in such area [or for recovery of any arrears of rent or compensation from such occupier, or for both] execute such decree [or order; or]
>
> (c) apply to any Judge or the Registrar of the Small Cause Court under Chapter VIII of the Presidency Small Cause Courts Act, 1882, in its application to the State of Maharashtra, or to any Court of Small Causes under Chapter IV-A of the Provincial Small Cause Courts Act, 1887, in its application to the State of Maharashtra, for a distress warrant for arrears of rent against any occupier of a house or premises in slum area.]

Under Clause (a) of Section 22(1), no person shall except with the previous permission in writing of the Competent Authority shall institute, any suit or proceeding for obtaining any decree or order for the eviction of an occupier from any building or land in a slum area or for recovery of any arrears of rent or compensation from any such occupier or for both after commencement of Maharashtra Slum Act, 1971. Clause (b) of Section 22(1) provides that no person shall except with the previous permission in writing of the Competent Authority, when any decree or order is obtained in any suit or proceeding instituted before such commencement for the eviction of any occupier from any such building, etc. or for recovery of any arrears of rent or compensation, shall execute such decree or

order. The Slum Act came in force in 1971. Admittedly, the landlord had filed Application No.35 of 1991 against the respondent no.2 for eviction in the year 1991. Therefore, Clause (b) of Section 22(1) can not be applicable.

8. The learned counsel for the respondent/landlord contends that the provisions of Slum Act will also not be applicable in view of the provisions of Section 31A of Bombay Rent Act referred above. In support of this contention, he placed reliance upon **Shri Sarwan Singh and Another v. Shri Kasturi Lal (1977) 1 Supreme Court Cases 750.** It appears that in Delhi Rent Control Act, an amendment was made in 1976, by virtue of which Chapter IIIA was incorporated consisting of Sections 25A, 25B and 25C providing for summary procedure for eviction of certain types of the tenants covered under Section 14A. In that case, provisions are almost similar to that of Section 13A(1) and 13A(2) of the Bombay Rent Act. Even summary procedure under Sections 25A, 25B and 25C of the Delhi Rent Act is almost similar, with minor difference, with the provisions in part II-A of the Bombay Rent Act.

9. Section 25A of the Delhi Rent Act reads as follows:

> "S.25A. **Provisions of this Chapter to have overriding effect.-** The provisions of this Chapter or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained elsewhere in this Act or in any other law for the time being in force."

Thus, it will be clear that provisions of Section 25A in the Delhi Rent Act and Section 31A in the Bombay Rent Act are similar. Their Lordships of the Supreme Court considered the special procedure laid down in Delhi Rent Act in the light of the provisions of Slum Areas (Improvement and Clearance) Act, 1956 where also there was provision that no such suit or proceeding or execution could be filed without obtaining necessary permission from the Competent Authority. Their Lordships finally came to conclusion that the summary procedure for eviction in certain cases will be applicable notwithstanding the provisions in Slum Clearance Act and the permission of the Competent Authority under Section 19 of the Slum Clearance Act was not necessary for eviction proceeding under Section 14A of the Delhi Rent Act. Their Lordships observed in paragraph 17 of the judgment in **Shri Sarwan Singh and another (Supra)** as follows:

> "17. The right conferred by Section 14A has to be enforced in accordance with the procedure prescribed by Chapter IIIA. That is the prescription of Section 25B(1). In order

> expressly to exclude the operation of all provisions inconsistent with Chapter IIIA whether such provisions are contained elsewhere in the Delhi Rent Act or in any other law like the Slum Clearance Act, Section 25A was put on the statute book. That section gives an overriding effect to the provisions of Chapter IIIA. But the legislature did not rest content by providing merely that the procedural provisions contained in Chapter IIIA would have such overriding effect. It took the precaution of making an additional provision in Section 14A itself that on and from the date of the order passed by the Central Government or any local authority calling upon a person to vacate the residential accommodation allotted to him, there shall accrue to such person a right to recover immediately the possession of any premises let out by him, "notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force or in any contract (whether express or implied), custom or usage to the contrary....." The provisions of Section 14A must, therefore, prevail over anything contained elsewhere in the Delhi Rent Act or in the Slum Clearance Act."

Same principle was reiterated by Their Lordships of the Supreme Court in **Ravi Dutt Sharma v. Ratan Lal Bhargava (1984) 2 Supreme Court Cases 75**. In paragraph 8 of the judgment, Their Lordships observed as follows:

> "8. The matter is no longer res integra and is covered by two decisions of this Court which are directly in point. The first one is the case of *Sarwan Singh v. Kasturi Lal*, in which an identical point came up for consideration. It was held by this Court that Sections 25-A, 25-B and 25-C of the Rent Act (introduced by the Amending Act) were special provisions with reference to Section 14-A thereof which superseded all existing Acts to the contrary. It was also pointed out that these newly added sections in the Rent Act were to apply only to a class of landlords and, therefore, the question

of violation of Article 14 of the Constitution did not arise. While considering various aspects of the aforesaid provisions, Chandrachud, J. (as he then was), spoke for the Court thus:

> When two or more laws operate in the same field and each contains a non obstante clause stating that its provisions will override those of any other law, stimulating and incisive problems of interpretation arise. Since statutory interpretation has no conventional protocol, cases of such conflict have to be decided in reference to the object and purpose of the laws under consideration.....(SCC p.760, para 20)
>
> For resolving such inter se conflicts, one other test may also be applied though the persuasive force of such a test is but one of the factors which combine to give a fair meaning to the language of the law. That test is that the later enactment must prevail over the earlier one. Section 14-A and Chapter III-A having been enacted with effect from December 1, 1975 are later enactments in reference to Section 19 of the Slum Clearance Act which, in its present form, was placed on the statute book with effect from February 28, 1965 and in reference to Section 39 of the same Act, which came into force in 1956 when the Act itself was passed. The legislature gave overriding effect to Section 14-A and Chapter III-A with the knowledge that Sections 19 and 39 of the Slum Clearance Act contained non obstante clauses of equal efficacy. Therefore, the later enactment must prevail over the former.....(SCC p.761, para 21)

Bearing in mind the language of the two laws, their object and purpose, and the fact that one of them is later in point of time and was enacted with the knowledge of the non obstante clauses in the earlier law, we have come to conclusion that the provisions of Section 14-A and Chapter III-A of the Rent Control Act must prevail over those contained in Sections 19 and

> 39 of the Slum Clearance Act. (SCC p.761, para 23)

An analysis of the aforesaid decision clearly reveals that the new Sections 14-A, 25-A, 25-B and 25-C had been introduced for the purpose of meeting a particular contingency as spelt out in the Objects and Reasons behind the new provisions. Once it is recognised that the newly added sections are in the nature of a special law intended to apply to special classes of landlords, the inevitable conclusion would be that the application of the Slum Act stands withdrawn to that extent and any suit falling within the scope of the aforesaid sections - 14(1)(e) and 14-A - would not be governed or controlled by Section 19(1)(a) of the Slum Act.

10. The Bombay Slum Act is in force since 1971, while Sections 13A(1), 13A(2) and Part II-A were incorporated in the Bombay Rent Act by Amendment Act of 1987. This special procedure was provided in spite of knowledge of Section 22 of the Slum Act. Taking into consideration the almost identical circumstances and provisions in Delhi Rent Act and the Bombay Rent Act, it must be held that when the application for eviction is filed under Sections 13A(1) and 13A(2) of the Rent Act, in view of the provisions of Section 31A incorporated in Part II-A of the Act, the provisions of Section 22 of the Slum Act will not be applicable and it will not be necessary to obtain prior permission for filing the application or proceeding for eviction of the tenant under Section 13A(1) and of licensee under Section 13A(2). In view of this legal position, objection taken by the applicant that the suit could not have been filed without prior permission under

Section 22.

11. In view of the facts and legal position, it is clear that the applicant could not make an application for impleading herself as party in the execution proceedings taken up by the landlord against her husband nor she could take any objection in the execution of the said decree against her husband in view of the fact that her suit for declaration that she was tenant was already dismissed in default and she was precluded from filing a fresh suit on same cause of action or for same reasons.

12. For the reasons given above, I also do not find any substance in the contention that the provisions of the Slum Act are applicable and the suit could not be filed for eviction. I find no substance in the Revision Application.

13. In the result, the Revision Application stands dismissed.

14. The learned counsel for the applicant at this stage makes a request to continue the stay to the execution proceeding. It appears that stay is in force since 25th March, 1996. It shall continue for a further period of six weeks from this day.

[J.H.BHATIA, J.]